

## REMARKS

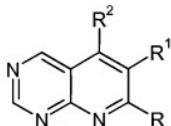
The present Amendment responds to the Office Action dated January 11, 2007 having a shortened statutory period for response set to expire April 11, 2007. Filed concurrently herewith is a request for a three (3) month extension of time to respond, making the present Amendment due by July 11, 2007.

In the Office Action, claims 1-13 were pending, with claims 10-13 withdrawn from consideration pursuant to Applicants' Election with Traverse, which was made during a telephone conversation between the Examiner and Applicants' representative, Thomas Hamilton, on August 30, 2006. Applicants confirm the election of Group I, claims 1-9. Applicants have withdrawn claims 10-13 and, in the event that claims 1 – 9 are found allowable, will consider whether it is appropriate to rejoin the claims in the application.

Turning to the rejections in the Office Action, the Examiner rejected claims 1, 5, 8, and 9 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner has objected to the occurrence of "especially methyl" in the claims. Applicants have amended claims 1, 5, 8, and 9 to remove the limitation and believe that this amendment addresses the Examiner's 112 concerns.

Next, the Examiner rejected claims 1, 2 and 6 under 35 U.S.C. § 102(b) as anticipated by Bennett et al. reference. The Examiner particularly directed Applicants attention to Table III 6-arylpypyrido[2,3-d]pyrimidin-7-amines, Nos. 9-48 and 50-56. Applicants respectfully disagree with the Examiner's position. A side by side comparison is provided of selected ones of Applicants' claimed compounds in claim 1, and the compounds disclosed in Table III of the Bennett et al. reference.

### Applicants' Compound

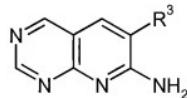


wherein:

X and Z are N; and

W and Y are CR<sup>8</sup>, wherein R<sup>8</sup> is H

### Bennett et al. Compound in Table III



wherein:

R<sup>1</sup> and R<sup>2</sup> are H

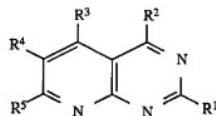
Applicants' note for the Examiner's attention that "R" as claimed in claim 1 of the present application cannot be NH<sub>2</sub> and therefore is not anticipated by the Bennett et al. reference. More particularly, as set forth in claim 1, R can be, among other substituents, NR<sup>3</sup>R<sup>4</sup>. Further, R<sup>3</sup> can be H and R<sup>4</sup> can

be H, but according to the proviso statement, R<sup>3</sup> and R<sup>4</sup> can not both be H at the same time. Accordingly, R can not be NH<sub>2</sub>. Applicants respectfully submit, then, that the § 102(b) rejection of claims 1, 2 and 6 is improper.

In addition, the Examiner has also made four (4) additional rejections of selected claims under 35 U.S.C. § 103(a), using three US Patent references and the Bennett et al. reference discussed above. Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness in each of the § 103 rejections and request the Examiner to reconsider the position taken in view of the reasons set forth herein.

Taking each rejection in turn, the Examiner first rejects claims 1-3, 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,620,981 to Blankley et al. (hereinafter Blankley I). To support this position, the Examiner specifically points to the compound 2-(2-ethoxy)-ethoxy-7-imino-pyrido[2,3-d]pyrimidine and states “[c]ompounds of the present claims that are methyl homologs of Blankley I would have been obvious to one having ordinary skill in the art at the time of the present invention.” Applicants respectfully disagree and note that the compounds of formula I according to the instant invention cannot have NH, N-acyl, O or S substituents at position R. Therefore, the claimed compounds are, in fact, not methyl homologous of Blankley I. As such, the claimed compounds of Applicants’ invention are not structurally similar to those disclosed Blankley I as the Examiner suggests, and therefore not *prima facie* obvious in view of the disclosure.

Next, claims 1-9 are rejected under § 103(a) over U.S. Patent No. 5,597,776 to Bratz et al. Bratz et al. teach “herbicides containing at least one antagonistic substituted pyrido[2,3-d]pyrimidine of the general formula I:



Bratz et al. Col. 1, Ins. 6-15. As set forth in the very beginning of the reference, then, Bratz et al. are concerned with herbicides, not fungicides as claimed in the present invention. Indeed, Column 5 of the reference specifically sets forth only one object as follows:

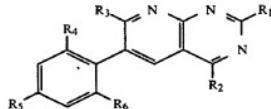
It is an object of the present invention to provide herbicides which ensure good control of weeds without significantly damaging the crops or substantially reducing the yield thereof.

Col. 5, Ins. 20-23. The reference goes on to state: “We have found that this object is achieved by the herbicides defined at the outset.” (Col. 5, Ins. 24-25) The Examiner takes the position that one

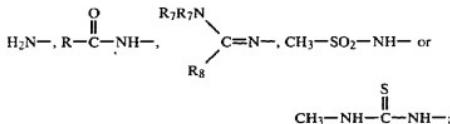
of ordinary skill would be motivated by the Bratz et al. reference to modify the general formula I, disclosed therein and provided above, to arrive at Applicants' claimed invention based upon an expectation that such a modification would lead to additional useful herbicides. Applicants respectfully submit that arriving at a compound intended to "combat fungi, especially fungal infections of plants" is contrary to the purpose of the Bratz et al. disclosure. (Applicants' specification, pg 1, Ins. 4-5).

As provided in Section 2143.01 V of the MPEP, "[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." (MPEP § 214.01V, pg. 2100-129). Applicants argue that one of ordinary skill would not modify the Bratz et al. compound to arrive at a fungicide. To do so is contrary to the object of the teachings. In addition to the foregoing, the Bratz et al. formula I is quite removed from Applicants' claimed invention. For example, as noted above, the instant invention cannot have a NH<sub>2</sub> group at position R<sub>2</sub>. There are too many modifications necessary to arrive at Applicants' claimed invention that could not be made without the use of hindsight reasoning. Accordingly, Applicants respectfully submit that the presently claimed invention is not obvious in view of the Bratz et al. reference.

Next, with respect to US Patent No. 4,271,164 to Blankley et al., Applicants note that the Blankley et al. patent disclosed the following general formula:



Col. 1, Ins. 40-49. However, the compounds claimed in the instant invention cannot have the following amino substituents (as defined for R<sub>3</sub> of US 4,271,164) at position R. As disclosed in Blankley et al. R<sub>3</sub> is



Furthermore, the Blankley et al. reference teaches compounds useful for the treatment of hypertension, and have remote structure from those of compounds of formula I according to the

present invention, which act as fungicides. As such, Applicants submit that the Blankley et al. reference does not render the instant invention obvious.

Finally, the Examiner rejected claims 1-3, 5-7 and 9 under 35 USC § 103(a) as being unpatentable over the Bennett reference. However, Applicants respectfully disagree. In the Office Action, the Examiner notes for Applicants' attention Table III, Nos. 9-48 and 50-56 of the reference. However, as noted above, each of these compounds has NH<sub>2</sub> present at the "R" position of the claimed invention. Accordingly, it is submitted that one of ordinary skill in the art would not modify this substituent to arrive at Applicants' claimed invention because the Bennett formula specifically requires NH<sub>2</sub> at this position. As such, Applicants respectfully submit that claims 1-3, 5-7 and 9 are not rendered obvious by this disclosure.

Based upon the foregoing then, Applicants submit that the pending claims are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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Date: July 11, 2007